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serious Constitutional concerns and thwart the express intent of Congress, but would also squarely contradict the Commission's own explicit findings and conclusions.

As NBC's initial comments indicated, only 18 months have elapsed since the new children's programming regulations became effective. During those few months, stations have responded to the new requirements -- as the Commission's own review of dozens of renewal applications indicated. It is also clear that the amount of educational/informational programming stations plan to offer is on the increase. Clearly there is no factual or policy basis for the Commission to abandon the current regulatory scheme and move toward the kind of detailed and stifling regulation many have urged in this proceeding.

NBC's May 7 Comments dealt extensively with the proposals contained in the Notice of Inquiry. These arguments apply with equal if not greater force to the more onerous proposals urged by several parties in their comments in this proceeding. In these Reply Comments NBC will also express our opposition to two additional regulatory proposals that were not covered previously -- requiring educational children's programs to be age-specific, and requiring that these programs be scheduled at particular times. We

will also comment on the new regulation that would require

II. THE COMMISSION SHOULD REJECT PROPOSALS TO REQUIRE AGE-SPECIFIC PROGRAMMING AND TO LIMIT LICENSEE SCHEDULING DISCRETION

Several parties urge the Commission to require licensees to target qualifying children's programs to particular age groups. Congress and the Commission have clearly rejected this approach. In the Report and Order implementing the Children's Television Act, the Commission stated

Imposing such a requirement would contravene the legislative intent to afford broadcasters the maximum flexibility in determining the "mix" of programming they will present to meet

The proponents of age-specific programming requirements have offered the Commission neither new evidence nor new arguments to warrant a reconsideration, much less a reversal of the Commission's current policy.

The Commission should also reject proposals that would require licensees to schedule qualifying educational programs at particular times of the day. Several parties propose that such programs be "regularly scheduled," i.e., broadcast at the same time every day or every week. In addition, they propose that qualifying programs be scheduled between 7 AM and 9 or 10 PM.

First, in the Children's Report and Order, the Commission refused to adopt a "regularly scheduled" prerequisite for qualifying programming on the grounds that it would unduly limit broadcaster discretion and flexibility.³ Second, such a requirement would be unfair to network affiliates in the Pacific and Mountain Time Zones who often find that the educational children's programs furnished by their networks are preempted for weekend sports events. These stations should not be penalized because, in those or similar instances, qualifying children's programs do not appear in their regular time slots.

Third, any requirement that licensees schedule educational children's programs at particular times of the day would contravene Congress' express intent to allow individual stations to determine how best to serve the special needs of children in their local communities. Scheduling decisions will be affected by the amount

³ 6 FCC Rcd at fn. 81.

and timing of children's programs offered on other broadcast outlets in the market, on the viewing patterns of children in the market, on the target audience for the educational programs the licensee itself offers and other factors.⁴

Fourth, contrary to the assertions of some parties to this proceeding, there are substantial numbers of children watching television prior to 7 AM. According to Neilsen, during the 1992-93 broadcast season, on average over 1.1 million children aged 17 and under watched television between the hours of 6 and 7 AM.

NBC acknowledges that programming designed to serve the educational and informational needs of children should be scheduled when children are available to watch television. However, we oppose any suggestion that the Commission dictate licensee schedules. If a licensee is unreasonable in its scheduling decisions, so that children do not have the opportunity to view programs that purport to address their needs, the Commission certainly has the ability to question the licensee's fulfillment of the Act and its rules at renewal time.

III. THE COMMISSION SHOULD GIVE CONSIDERATION TO CTW'S PROPOSAL ON THE USE OF EDUCATIONAL CONSULTANTS AND THE DEVELOPMENT A STATEMENT OF THE EDUCATIONAL GOALS OF QUALIFYING PROGRAMS

Although NBC contends that both additional regulation and increased regulatory "guidance" are unnecessary, a proposal

⁴ Many local stations program local and national news in the hours between 7 A.M. and the time when most children leave for school. The licensee, not the Commission, is in the best position to know whether the best time to program to children is prior to 7 AM, or whether the local community is best served by news or children's programming after 7 AM.

advanced by the Children's Television Workshop ("CTW"), with some modification, deserves Commission and broadcaster consideration.⁵ CTW suggests that in order to be considered "educational and informational" programming that fulfills the requirements of the Act, a program must be (i) developed with the assistance of an educational advisor of the station's choosing; (ii) created in conjunction with explicit written educational goals; and (iii) evaluated, in writing, in terms of its success in meeting those goals. The written statement of goals and written evaluation would be placed in station Public Inspection Files and submitted to the Commission as part of stations' renewal applications.

These suggestions offer several benefits. First, creation of a statement of goals and the subsequent evaluation would help broadcasters and producers to focus attention on the educational content of qualifying shows. This should have the positive effect of increasing both the amount and the impact of the educational material in these programs. Second, the public and the Commission would have access to more relevant information on the educational and informational children's programs offered by licensees than is currently available, which will permit more meaningful evaluations of licensee compliance with the Act and the Commission's rules. At the same time, CTW's suggestions do not make it necessary for the Commission to substitute its judgment for the licensee's when determining whether a particular program serves children's educational and informational needs. Instead, the licensee will articulate the educational/informational goals of each program or

⁵ Comments of Children's Television Workshop, pp. 8-11.

program series. The Commission's role will be limited to a general review of whether the licensee was reasonable in determining that the program, in fact, achieved those goals, or at least made a bona fide effort to achieve the goals.⁶

NBC urges the Commission to consider a policy that would encourage broadcasters and producers to make use of educational consultants in the development and production of qualifying children's programs. NBC has long consulted with a Social Science Advisory Panel on the content of its children's programming. One of NBC's current educational children's programs, "Name Your Adventure," is being developed and produced with input from the noted educator, Dr. Gordon Berry, who is a consultant to the show. We have found the guidance and suggestions provided by the Panel and Dr. Berry to be extremely valuable in developing programs that serve children's unique educational needs. Their consultation has helped NBC and its program suppliers to maximize the educational content of our children's programs, and to communicate informational material and pro-social messages in a way that will be most effective and engaging for children.

However, the Commission should not adopt a hard and fast requirement that a program must be associated with a educational consultant before it qualifies. Although the use of such a consultant should be prima facie evidence that a particular program

⁶ NBC agrees with CTW's suggestion that, in order to encourage creative and innovative educational programming, the Commission should fully credit the licensee's efforts even if the post-broadcast evaluation demonstrates that the program's educational goals were not entirely achieved. CTW Comments at p. 10.

is "specifically designed" to serve the informational and educational needs of children, a mandatory requirement might discourage producers and licensees from inserting educational material into children's programs that are not initially designed to qualify under the Act. For example, particular episodes of ongoing series which were not originally "specifically designed" to serve children's educational needs, nonetheless can often present particular episodes that meet this test. The licensee should be able to demonstrate, perhaps through the use of the statement of educational goals and post-broadcast evaluation discussed below, that a particular program or an episode of an ongoing series was "specifically designed" to serve children's educational needs, even without the use of a consultant.

NBC also believes that CTW's proposal for a pre-production, written statement of the educational purposes of a series or individual program has some merit. In fact, NBC is already using this technique. Dr. Berry's "statement of purpose" for "Name Your Adventure" during the 1993-94 season is attached; he is also preparing written materials on the specific educational goals of each segment of the program before it is produced for the 1993-94 season. NBC has found this exercise helps to focus the attention of the production team on educational goals the program is trying to achieve.⁷

⁷ However, NBC disagrees with CTW's suggestion that these written statements identify the "target audience intended to be reached" by the program because, as noted earlier, we don't believe broadcasters should be required to target their educational children's programming to any particular segment of the child audience.

NBC also agrees there should be some kind of post-broadcast evaluation of the program or program series which addresses whether it achieved its stated educational goals. However, we don't think the process should be as formal as CTW suggests. CTW implies that the evaluation be conducted by some expert or independent entity, using formal methodology and assumptions. NBC submits this is overly complicated and burdensome. It should be sufficient if, after the end of a season (for a series) or broadcast (for an individual program), a written statement of how the program achieved or tried to achieve its stated educational goals is placed in the station's Public Inspection File. The statement can be prepared by the program producer, the licensee, the educational consultant or an expert outside entity. It should not be lengthy or complex. It should merely explain how the content of the program or program series in fact pursued and hopefully achieved its original educational goals.

Pursuant to CTW's suggestion, the identity of the educational advisor, the written statement of educational purpose and the post-broadcast evaluation would be placed in each station's Public Inspection File and submitted to the Commission with the station's license renewal application. Since scheduling information is already provided, the use of an outside consultant, explicitly stated goals, and subsequent analysis really should provide a total package on which the Commission or the public can make informed judgments about the licensee's overall compliance with the Act -- without resorting to mechanistic quotas that can obscure a licensee's real performance and discourage creativity.

IV. CONCLUSION

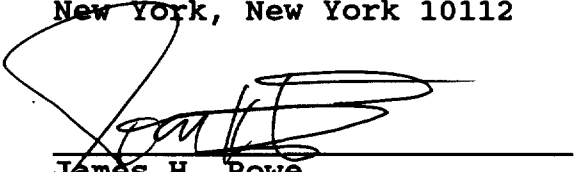
For the reasons stated in its Comments filed May 7, 1993 and in these Reply Comments, NBC urges the Commission not to adopt the proposals advanced by parties who wish to impose draconian, unjustified requirements on licensees with respect to their children's programming obligations. The only proposal that merits Commission consideration would encourage licensees to use educational consultants in the development and production of educational children's programs, and would require both an explicit articulation of the educational and informational goals of qualifying children's programs, and an evaluation demonstrating how qualifying programs in fact met those goals.

Respectfully submitted,



Richard Cotton
Ellen Shaw Agress

National Broadcasting Company, Inc.
30 Rockefeller Plaza
New York, New York 10112



James H. Rowe
Howard Monderer
John K. Hane

National Broadcasting Company, Inc.
1331 Pennsylvania Ave., N.W.
Washington, D.C. 20004

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STATEMENT OF PURPOSE FOR
"NAME YOUR ADVENTURE"
by Dr. Gordon Berry

NAME YOUR ADVENTURE is a weekly series that takes the personal adventures of teenagers and uses them to creatively explore the educational, informational, and prosocial dimensions of their experiences. It is from these adventures that we will highlight the principles of science and mathematics, events related to history, the workings of government, the beauty of the arts and music, the uniqueness of nature, the achievement of personal goals, and the contributions of the famous and not so famous people to American life. At the same time, the weekly series will integrate into the content social messages related to the value of education, the importance of teamwork, the value of self discipline, the importance of maintaining a positive sense of self-esteem, the need to use leisure time wisely, and the value of a healthy mind and body. NAME YOUR ADVENTURE is, therefore, a two tier educational television program that is driven by informational content on one level, and enriched with social messages that are important to teenagers as they move into adulthood.